RECENT CASES

ATTORNEY AND CLIENT—DISBARMENT—GROUNDS.—IN RE RADFORD, 134 N. W., 473 (MICH.).—*Held*, that the power of the courts to disbar an attorney is not limited to cases where he has been convicted of crime or of misconduct in a professional capacity, but may be exercised in cases of conduct, though not in the capacity of an attorney, which show his character to be such as to unfit him to be intrusted with the office.

It may be stated in general terms that, when the proper grounds exist, an attorney may be disbarred from practice. *People v. Goodrich*, 79 Ill., 148; *State v. Harber*, 129 Mo., 271; *Bradley v. Fisher*, 13 Wall. (U. S.), 335. The misconduct may be unconnected with his profession, and the gist of the action is his unfitness to manage the legal business of others. *Jones' Case*, 2 Pa. Dist., 538. But the reason for such disbarment should be most weighty. *Ex. P. Secombe*, 19 How. (U. S.), 9; *State v. Stiles*. Such matters as conviction for a crime are, *prima facia*, grounds for disbarment. *People v. Schintz*, 181 Ill., 574; *State v. Chapman*, 11 Ohio, 430. Or, the failure of an attorney to show fiduciary relations towards his client is good ground for suspension or disbarment. *Baker v. State*, 90 Ga., 153; *State v. Davis*, 92 Tenn., 634; *Jeffries v. Laurie*, 23 Fed., 786. Even the use of rude conduct and offensive language towards the judge personally, is sufficient for the Court to disbar him. *State v. Maxwell*, 19 Fla., 31; *United States v. Green*, 85 Fed., 857. It appears, also, by the weight of authority, that, if the misconduct constitutes an indictable offense, the Court will disbar the attorney even though there had been no previous indictment and conviction. *Perry v. State*, 3 Greene (Ia.), 550; *State v. Winton*, 11 Oregon, 456; *Smith v. State*, 1 Yerg. (Tenn.), 228. *Contra, Breen v. State*, 22 Ark., 149; *People v. Treadwell*, 66 Col., 400. But some courts hold that statutes do not restrict the general powers of the Court over the attorneys, thus they may be removed for other than statutory grounds. *Boston Bar Assoc. v. Greenhood*, 168 Mass., 169; *In re Boone*, 83 Fed., 944. *Contra, In re Eaton*, 4 N. D., 514; *Kane v. Haywood*, 66 N. C., 1.

ATTORNEY AND CLIENT—NEGLIGENCE OF ATTORNEY—DAMAGES.—FLYNN ET AL. V. JUDGE, 133 N. Y. S., 794.—*Held*, that the only damages claimed from negligence of an attorney being loss in money, the measure thereof is the difference in the pecuniary position of the client from what it would have been had there been no negligence.

The measure of damages caused by the negligence of an attorney is the amount of loss actually sustained and not the nominal amount claimed in the suit. *Eccles v. Stephenson*, 6 Ky., 517; *Dearborn v. Dearborn*, 16 Mass., 316; *Crooker v. Hutchinson*, 2 D. Chip., 117. An attorney who loses a client's cause of action by his negligence is liable for the actual as

well as the exemplary damages which the client might have recovered in an action thereon. *Patterson v. Wallace & Frazer,* 79 S. W., 1077. And if he causes his client to lay himself open to criminal prosecution, punitive damages are proper. *Hill v. Montgomery,* 84 Ill. App., 300. And want of diligence on the part of the client will not affect his liability. *Cox v. Sullivan,* 7 Ga., 144. If an attorney fails to bring suit when engaged so to do, he is liable for whatever amount might have been recovered had he brought suit. *Gilbert v. Williams,* 8 Mass., 51; *Fitch v. Scott,* 4 Miss., 314. But if he could not have recovered had he maintained the action, he is liable for nominal damages only. *Grayson v. Wilkinson,* 13 Miss., 268. And the amount of the attorney's fee is immaterial. *Irwin v. VanPelt,* 56 N. Y., 417. Even if he acts gratuitously. *Lawall v. Groman,* 80 Pa. St., 532. And champerty cannot be set up as a defense, *Goodman v. Walker,* 30 Ala., 482.

BILLS AND NOTES—STIPULATIONS FOR ATTORNEY'S FEES—LIQUIDATED DAMAGES.—FIRST NATIONAL BANK OF VICKSBURG V. MAYER, 57 SOU. (LA.), 308.—*Held,* that a stipulation in a note for 10 per cent attorney's fees, if the note is placed in the hands of an attorney for collection, is a stipulation for liquidated damages, and the fees are recoverable in an action on the note without any proof that they were incurred.

As to stipulations on the face of a note providing for the payment of attorney's fees there is much conflict. The decisions on this much mooted point have not turned upon the question whether the amount of the fees was fixed or indefinite. *Wilson Sewing Machine Co. v. Moreno,* 7 Fed., 806; *Myer v. Hart,* 40 Mich., 517. Many cases hold the stipulation void, as against public policy; *Witherspoon v. Musselman,* 14 Bush. (Ky.), 214; *Myer v. Hart, supra;* as tending to encourage litigation, and oppress the debtor; *Finley v. Hopkins,* 111 N. C., 340; as usurious; *Wright v. Traver,* 73 Mich., 493; *Dow v. Updike,* 11 Nebr., 94; as an agreement for a penalty; *Bullock v. Taylor,* 39 Mich., 137. The weight of authority, however, seems to support the principal case in holding that such a stipulation is valid. *Bowie v. Hall,* 69 Md., 433; *Williams v. Flowers,* 90 Ala., 136. In some of these jurisdictions, it is held, that while the stipulation is not void, it destroys the negotiability of the note. *Banking Co. v. Gay,* 63 Mo., 33; *Wood v. North,* 84 Pa. St., 407. The majority of such cases, however, hold that the negotiability of the note is not affected. *Seaton v. Scoville,* 18 Kans., 433; *Sperry v. Horr,* 32 Iowa, 184.

CARRIERS—CARRIAGE OF PASSENGERS—PERSONAL INJURIES—LIABILITY.—LOUISVILLE & N. R. CO. V. BREWER, 143 S. W. (KY.), 1014.—*Held,* a carrier is not liable for injuries to a pregnant female passenger caused by the unnatural appearance and conduct of a lunatic passenger in charge of an attendant, where the female passenger made no complaint to any officer of the train, and where none of them knew of her physical condition, or that the lunatic was giving her any inconvenience, and where the lunatic was not violent.